



March 21, 2000

Mr. Thomas W. Deaton  
Flournoy & Deaton, L.L.P.  
P.O. Box 1546  
Lufkin, Texas 75902-1546

OR2000-1102

Dear Mr. Deaton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 133314.

The Deep East Texas Workforce Development Board (the "board") received a request for the competing proposals, rating sheets, and review comments documenting the strengths and weaknesses of named bidders on a proposal to operate workforce centers. You request our decision as to whether the requested information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. You have provided responsive information for our review.

Because the property and privacy rights of third parties may be implicated by the release of the requested information, you notified Lockheed Martin, DETCOG, and Archetype/Goodwill, whose information is responsive to the request. See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). The third party notice must include a copy of the written request for information and a statement in the form prescribed by the attorney general.<sup>1</sup> Gov't Code § 552.305(d)(2). That statement must tell the third party of its right to submit in writing to the attorney general, not later than the tenth business day after receiving the notice, specific reasons as to why the requested information should be withheld from public disclosure. This

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<sup>1</sup> We note that the notices sent to the third parties are not in the form prescribed by this office. That form can be found in Appendix C of the 2000 Texas Public Information Handbook. The handbook is available online at the Office of the Attorney General's web site at [www.oag.state.tx.us](http://www.oag.state.tx.us).

office has not received any arguments or briefs from any of the third parties involved to support a claim that the third party's information should be withheld under section 552.110. Although you state that the requested information "could be a trade secret," you make no argument in support of that assertion. Therefore, we have no basis to conclude that the companies' proposals are excepted from disclosure by section 552.110. *See* Open Records Decision Nos. 639 at 4 (1996) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure), 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3 (1990).

You also assert that the requested information may be excepted from required disclosure by section 552.104. Section 552.104 excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of this exception is to protect the purchasing interests of a governmental body, usually in competitive bidding situations prior to the awarding of a contract. Open Records Decision No. 593 at 2 (1991). To avail itself of the protection of this exception, a governmental body must demonstrate potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). You have not demonstrated that release of this information would harm the board's interests in the current bidding situation. Further, the protection afforded by section 552.104 generally ends after bidding is completed and the contract has been awarded. *See* Open Records Decision 541 (1990). Therefore, none of the responsive information may be withheld under section 552.104 of the Government Code.

The board must release the requested information to the requestor. However, we caution you that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Patricia Michels Anderson  
Assistant Attorney General  
Open Records Division

PMA/ch

Ref: ID# 133314

Encl. Submitted documents

cc: Ms. Claudia Langguth  
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